

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

June 4, 2020

Lyle W. Cayce
Clerk

No. 19-50848
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

JORGE DIAZ, also known as Payaso, also known as Narizon,

Defendant–Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:10-CR-2213-20

Before OWEN, Chief Judge, and SOUTHWICK and WILLETT, Circuit Judges.
PER CURIAM:*

Jorge Diaz, federal prisoner # 68521-280, appeals the denial of his postjudgment motion to modify or waive the fine imposed following his guilty plea to engaging in the affairs of an enterprise through a pattern of racketeering activity. The \$5,000 fine was imposed in a judgment entered in 2012. That judgment was amended in 2018 to reduce the term of imprisonment. Diaz appealed, and we dismissed the appeal under *Anders v.*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 19-50848

California, 386 U.S. 738 (1967). Diaz then filed a motion to modify or waive the \$5,000 fine, and the district court denied that motion. In the present appeal from the denial of that motion, Diaz argues, for the first time, that the fine violated the Eighth Amendment’s Excessive Fines Clause.

We generally will not consider new theories of relief raised for the first time on appeal absent exceptional circumstances. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999) (per curiam) (citing *North Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 916 (5th Cir. 1996)). In any event, the district court was without authority to modify the fine. To the extent that Diaz’s motion in the district court could be construed as a request for relief under 28 U.S.C. § 2255, a challenge to a fine imposed at sentencing is not cognizable in a § 2255 review. *United States v. Segler*, 37 F.3d 1131, 1136-37 (5th Cir. 1994) (citing *United States v. Michaud*, 901 F.2d 5, 7 (1st Cir. 1990)). Nor did the district court have authority to modify or waive the fine under 18 U.S.C. § 3582(c) and Federal Rule of Criminal Procedure 35. *See* 18 U.S.C. § 3582(c) (authorizing only “[m]odification[s] of an imposed term of imprisonment”); FED. R. CRIM. P. 35(a), (b); *United States v. Lopez*, 26 F.3d 512, 515-21 (5th Cir. 1994) (per curiam).

Because there was no legal basis for the pro se motion, Diaz has appealed “from the denial of a meaningless, unauthorized motion” that had no jurisdictional basis. *United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994) (per curiam). Accordingly, we lack jurisdiction and dismiss the appeal. *See United States v. Key*, 205 F.3d 773, 774-75 (5th Cir. 2000) (per curiam).

APPEAL DISMISSED.

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J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the appeal is dismissed for lack of jurisdiction.



Certified as a true copy and issued
as the mandate on Jun 04, 2020

Attest: 
Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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June 04, 2020

Ms. Jeannette Clack
Western District of Texas, El Paso
United States District Court
525 Magoffin Avenue
Room 108
El Paso, TX 79901-0000

No. 19-50848 USA v. Jorge Diaz
USDC No. 3:10-CR-2213-20

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Charles Whitney

By: _____
Charles B. Whitney, Deputy Clerk

cc w/encl:
Mr. Jorge Diaz
Mr. Joseph H. Gay Jr.